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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,597	09/12/2001	Orville Phillip Frazee	469	8276

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EXAMINER

TAMAI, KARL I

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 08/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,597

Applicant(s)

FRAZEE, ORVILLE PHILLIP

Examiner

Tamai IE Karl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 5/29/2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The amended title "CONTROLLABLE DISK TYPE MOTOR CAPABLE OF HIGH OUTPUT TOROUE" has been entered into the specification. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The examiner suggested: "CONTROLLABLE DISK TYPE MOTOR WITH EQUAL NUMBER OF STATOR AND ROTOR MAGNETIC POLES"..

Drawings

2. The objection to the drawings under 37 CFR 1.83(a) is withdrawn.

Claim Rejections - 35 USC § 112

3. The rejection of Claims 6 and 12 under 35 U.S.C. 112, first paragraph, is withdrawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-3, 5, 7-9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patarchi (WO99/276635) and Shtipelman (US 4,922,145). Patarchi teaches every aspect of the invention except a non-magnetic housing. Shtipelman teaches the housing being non-magnetic. It would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Patarchi with a non-magnetic housing because Shtipelman teaches aluminum as the preferred material for the housing, and because a non-magnetic housing would reduce flux losses.

6. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patarchi (WO99/276635) and Shtipelman (US 4,922,145), in further view of Lohr (US 3,566,165). Patarchi and Shtipelman teach every aspect of the invention except an output flange on the shaft. Lohr teaches an output flange 20 for driving a wheel. It would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Patarchi and Shtipelman with an output flange of Lohr to drive a wheel.

Response to Arguments

7. Applicant's arguments filed 5/29/2003 have been fully considered but they are not persuasive.

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8. The Applicant's argument Patarchi is a caseless motor is not persuasive.

Patarchi figures 4 and figure 6 show a case for the motor. Patarchi teaches the case provides a cool oil circuit 90. The Applicant's argument regarding the "like" plurality of pairs of ferromagnetic pole pieces is not persuasive because a "like" plurality refers to the "even plurality" of rotor magnets, which is shown in figure 6. The Applicant's argument regarding hindsight reconstruction is not persuasive the examiner's conclusion of obviousness is based upon the references, not on the Applicant's specification (see *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971) holding that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper). In the instant application motivation was properly drawn from the cited references. The Applicant's argument that "like refers to the same number of rotor and stator magnets" is not persuasive because the limitation is not claimed. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

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the prior art provides motivation for each rejection: in regards to the aluminum casing, Shtipelman teaches it is the preferred material the flux is contained within the magnetic stator path which inherently reduces flux losses; in regards to the output flange, Lohr teaches the motor is used to drive a wheel through the output flange 20; therefore the rejections are properly motivated and maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

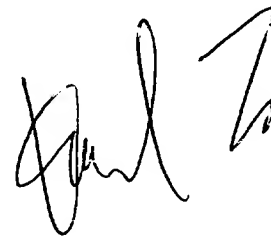
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl I.E. Tamai whose telephone number is (703) 305-7066.

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The examiner can be normally contacted on Monday through Friday from 8:00 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nestor Ramirez, can be reached at (703) 308-1371. The facsimile number for the Group is (703) 305-3432.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Karl I Tamai
PRIMARY PATENT EXAMINER
August 18, 2003

A handwritten signature in black ink, appearing to read 'Karl I Tamai', with a long, sweeping horizontal line extending to the right.

KARL TAMAI
PRIMARY EXAMINER